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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-707

ROGER BARTHULI,
Petitioner,

vs.

BOARD OF TRUSTEES OF JEFFERSON ELEMENTARY SCHOOL DISTRICT,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The Opinion of the Supreme Court of California, dated July 22, 1977, is reported in 19 Cal.3d 717, 139 Cal.Rptr. 627 and 566 P.2d 261, and is reprinted as App. A, p. 1a, of Petition.

The Opinion of the Court of Appeal, First Appellate District, filed on March 8, 1976, has not been

reported; it is reprinted as App. B, p. 12a, of Petition.

The Memorandum Decision of the Superior Court for the State of California, County of San Mateo, filed on January 23, 1974, has not been reported; it is reprinted as App. C, p. 19a, of Petition.

The Findings of Fact and Conclusions of Law of the Superior Court for the State of California, County of San Mateo, filed on March 26, 1974, has not been reported; it is reprinted as Appendix A, page 1a, *infra.*

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether state law creating an interest in public employment should be given effect as defining the extent of that interest?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the United States Constitution and the California Education Code §§938 (renumbered §35031), 13314 (renumbered §§44893, 87454) and 13315 (renumbered §§44897, 87458) are set forth in the Petition at pp. 3-5.

California Civil Code §3390:

The following obligations cannot be specifically enforced:

1. An obligation to render personal service;

2. An obligation to employ another in personal service;

3. An agreement to perform an act which the party has not power lawfully to perform when required to do so;

4. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,

5. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

STATEMENT

This litigation concerns the rescission of petitioner's contract for the position of Associate Superintendent for Business in respondent's school district.

On July 11, 1973, respondent Board of Trustees rescinded petitioner's contract as Associate Superintendent for Business because of his prior breach of his employment contract. Although petitioner was entitled to return to the district as a permanent certificated employee, a classroom teacher, when the fall semester commenced petitioner did not seek employment status as a classroom teacher. Instead, petitioner, on July 17, 1973, filed a petition for a writ of mandate to compel his reinstatement as an Associate Superintendent for Business. On July 25, 1973,

respondent filed its answer to the petition and on October 9, 1973, an 8-day trial commenced in the Superior Court of the State of California, for the County of San Mateo. The Superior Court found that petitioner had an adequate remedy at law and that he had breached his contract with respondent school district in several respects, thus giving respondent the right to rescind. The Superior Court's Findings of Fact and Conclusions of Law are attached as Appendix A hereto, page 1a, *infra.*

The decision of the Superior Court was appealed to the Court of Appeal, First Appellate District, which Court issued its opinion reversing the decision of the Superior Court with directions to issue a writ of mandate directing reinstatement of petitioner. Respondent petitioned the Supreme Court of the State of California and a hearing was granted.

The Supreme Court of California filed an Opinion (App. A of Petition) affirming the judgment of the Superior Court. In its opinion the Supreme Court analyzed the applicable state law and held that California law provides that an administrator is not a permanent employee, as such, and that such person's tenure (permanence) rights and thus his property rights are those of a classroom teacher, not those of an administrator. (App. A of Petition, p. 5a)

ARGUMENT

The issue in the present case is distinguishable from the line of cases decided by this Court and other

federal and state courts wherein a public employee's interest in continued public employment was at issue. In this case, petitioner's interest in continued employment is as a classroom teacher, and that fact has never been questioned.

Thus, while petitioner retained his status as a permanent certificated employee, he was given a full, fair and impartial hearing concerning the validity of respondent's reasons for rescinding his contract because of his prior breach thereof.

The decision of the Supreme Court of California is manifestly correct. There is no conflict of decision nor is there an important question of federal law requiring a decision by this Court.

I

THE DECISION BELOW IS CLEARLY CORRECT

The California Supreme Court thoroughly analyzed the applicable state law with regard to a property interest in continued public employment.

Although California Education Code §938 (renumbered §35031) authorizes a contract for a term of four years, other provisions of the California Education Code specifically define any property interest arising therefrom. California Education Code §13314 (renumbered §§44893, 87454) provides that the permanent classification of an employee advanced from a teaching position to an administrative or supervisory position is that of a classroom teacher. Cali-

fornia Education Code §13315 (renumbered §§44897, 87458) provides that the permanent classification of an individual employed in an administrative or supervisory position, upon completion of a specific period of time, is that of a classroom teacher.

California Civil Code §3390 provides that obligations to render personal service or to employ another in personal service are not specifically enforceable; however, parties to such contracts have an adequate remedy at law for breach of contract and an award of money damages.

In *Bishop v. Wood* (1976) 426 U.S. 341, at pp. 344-345, 48 L.Ed.2d 684, 96 S.Ct. 2074, the Court states:

> "A property interest in employment can, of course, be created by ordinance, or by an implied contract. In either case, however, the sufficiency of the claim of entitlement must be decided by reference to state law. The North Carolina Supreme Court has held that an enforceable expectation of continued public employment in that State can exist only if the employer, by statute or contract, has actually granted some form of guarantee. Still v. Lance, 275 NC 254, 182 SE2d 403 (1971). Whether such a guarantee has been given can be determined only by an examination of the particular statute or ordinance in question."

As in *Bishop,* the California Supreme Court's reading of the applicable statutes is tenable and therefore sufficient to foreclose independent examination of the state law issue.

II

THE DECISION BELOW DOES NOT CONFLICT WITH THE RELEVANT DECISIONS OF THIS COURT OR OTHER COURTS WITH RESPECT TO DEFINING A PROPERTY INTEREST IN A SPECIFIED TERM PUBLIC EMPLOYMENT CONTRACT

Petitioner postulates that the decision below totally ignores the rulings of this Court and/or other courts to the effect that a contractual term of employment confers a property interest protectable by the Due Process Clause of the Fourteenth Amendment. THIS POSITION IS CLEARLY WRONG!

This Court's decisions are uniform in holding that once a state has granted a "property interest" in employment, such an interest is safeguarded by procedural due process. The simple distinction between cases cited by petitioner and the case at bar is that petitioner was never denied continued public employment as a full-time, permanent, certificated employee of respondent school district with all the attendant rights and benefits.

Thus, this is not such a case as described by Justice Marshall in his dissenting opinion in *Arnett v. Kennedy* (1974) 416 U.S. 134, 40 L.Ed.2d 15, 94 S.Ct. 1633, wherein an employee's employment is terminated, job opportunities may be few and benefits are suspended. Rather, this is a case where balancing of necessity, such as governmental interest versus individual interest is weighted entirely on the respondent's side.

III

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW

Petitioner finally postulates that the questions raised by the decision below are of far-reaching importance affecting countless public school administrators throughout the United States. This position is also in error.

The decision below has a direct impact upon California school administrators. This impact, however, is limited to administrators, whose contracts are governed by the same provisions of state law. To say, as petitioner has said, that the decision below placed countless numbers of school administrators under the direct threat of summary dismissal enshrines an hypothesis to the exclusion of reality. That this is so is clearly exhibited by the decisions petitioner has cited in support of his position. Each of those decisions involved a terminated employee's interest in continued public employment, an element not existing here. The California statutory law has carefully protected an employee's interest in continued public employment, an important element missing in the cited decisions.

The California Supreme Court has reviewed state law, which authorizes the contract entered into between the petitioner and respondent, and other applicable state law provisions relating thereto. By statute, petitioner attained tenure (permanence) as a classroom teacher. Statutes set forth the procedure for the termination of such right. These procedures are

consistent with the due process requirement of the Fourteenth Amendment. Although the state law is silent on procedures for termination of administrators' contracts, the absence of such procedures does not invalidate the action taken by the respondent school district. Quite to the contrary, applicable state law provides an adequate remedy at law to safeguard petitioner's interests by way of an action for breach of contract, while continuing in the employ of respondent's school district.

The decision below comports with the requirements of the Due Process Clause of the Fourteenth Amendment in all respects.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,
LAW OFFICES OF WILLIAM R. JOHNSTON,
By WILLIAM R. JOHNSTON,
JOSEPH P. BINGAMAN,
Counsel for Respondent.

December 14, 1977.

(Appendix A Follows)

APPENDIX "A"

Appendix A

Superior Court of the State of California
for the County of San Mateo

No. 177187

Roger Barthuli,	Petitioner,
vs.	
Board of Trustees, Jefferson Elementary School District,	Respondent.

[Filed Mar. 26, 1974]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on October 9, 10, 15, 16, 17, 18, 19 and 24, 1973, before the Court sitting without a jury. William E. Brown, Attorney at Law, appearing as counsel for petitioner and William R. Johnston, Attorney at Law, appearing as counsel for the defendant, and the Court having heard the testimony and examined the proofs offered by the respective parties, and the parties having filed their written argument, and the cause having been submitted to the Court for decision, the Court being fully advised in the premises now makes findings of fact as follows:

1. That petitioner did not duly and faithfully perform all of his obligations as set forth in his contract of employment with the respondent, which contract was entered into on June 21, 1972, and commenced July 1, 1972, and was for a period of 4 years, a copy of which was attached as Exhibit A to the Petition for Writ of Mandate of petitioner on file herein.

2. That petitioner breached said contract of employment and that good cause existed for his dismissal in that he did:

(1) Fail to adequately prepare, maintain and assume responsibility for the general management of:

(a) School district transportation;

(b) School district budget;

(c) School district contracts and leases;

(d) School district purchases and warehousing;

(e) Maintenance of school district physical plant;

(f) School district payroll and related records;

(g) School district accounts payable;

(h) Inventory of school district equipment;

(2) Fail to carry out the directives and policies of respondent;

(3) Fail to carry out the provisions of the California Education Code with regard to competitive bidding;

(4) Improperly split purchase orders to avoid the above referenced competitive bidding requirements;

(5) Permit improper utilization of school district property.

3. That respondent at a special meeting held on July 11, 1973, did rescind petitioner's contract as Associate Superintendent-Business with respondent.

4. That respondent did properly consider petitioner's breach of contract and did base its rescission on such grounds.

5. That petitioner did not request in writing a statement of the reasons or the findings of fact upon which respondent acted to rescind petitioner's contract.

6. That petitioner at no time did request in writing a hearing before respondent regarding the rescission of his contract.

7. That petitioner had served in the position of Associate Superintendent-Business with the Jefferson Elementary School District for 12 years.

8. That petitioner had acquired the status of permanent certificated employee of the Jefferson Elementary School District as a classroom teacher.

9. That petitioner had the rights of a permanent certificated employee in and to the position of classroom teacher.

10. That petitioner sought reinstatement to his administrative position as Associate Superintendent-Business.

11. That petitioner did not and has not sought reinstatement to the position of classroom teacher.

From the foregoing facts, the Court concludes:

1. That evidence of Petitioner's conduct occurring outside the current contract term (i.e., before July 1, 1972, or June 21, 1972) is irrelevant to the issues presented herein, and was, therefore, properly excluded when such evidence was offered by respondent.

2. That respondent, Board of Trustees of the Jefferson Elementary School District, is charged by law with the orderly operation of the school district and is vested with wide discretion as to the employment and retention of suitable personnel.

3. That Section 938 of the California Education Code is not relevant to these proceedings because a school district governing board may rescind a contract of employment of an Associate Superintendent for Business who fails to adequately perform the duties of his office.

4. That petitioner's conduct did constitute substantial failure of performance of his contract with respondent and said substantial non-performance did provide respondent with grounds to rescind said contract.

5. That Section 938 of the California Education Code does not impose a clear duty on respondent to reinstate petitioner to his position of Associate Superintendent-Business.

6. That petitioner's status as Associate Superintendent for Business is based upon contract.

7. That petitioner has an adequate remedy at law for money damages based on breach of contract and

that, therefore, petitioner is not entitled to seek relief by way of mandamus.

Let judgment be entered accordingly.

Dated: Mar 25 1974

Robert E. Carey
Judge of the Superior Court